RESOLUTION NO. W-2008-1

A RESOLUTION OF THE TOWN OF STRATTON WATER ENTERPRISE APPROVING A LOAN BETWEEN THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY AND THE TOWN OF STRATTON, COLORADO, ACTING BY AND THROUGH ITS TOWN OF STRATTON WATER ENTERPRISE IN THE PRINCIPAL AMOUNT OF $90,000 FOR THE PURPOSE OF FINANCING IMPROVEMENTS TO THE TOWN OF STRATTON WATER FACILITIES; AUTHORIZING THE FORM AND EXECUTION OF A LOAN AGREEMENT AND A GOVERNMENTAL AGENCY BOND EVIDENCING THE LOAN; PROVIDING THAT THE GOVERNMENTAL AGENCY BOND SHALL BE PAYABLE ONLY FROM REVENUES OF THE TOWN OF STRATTON WATER ENTERPRISE; AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH.

WHEREAS, the Town of Stratton Water Enterprise (the "Enterprise") is a duly created water activity enterprise existing under the provisions of Title 37, Article 45.1, Colorado Revised Statutes ("Water Activity Law"); and

WHEREAS, the Enterprise has no authority to levy or collect or use in its operations taxes, whether sales taxes, use taxes or ad valorem taxes; and

WHEREAS, the Board of Trustees of the Town of Stratton (the "Board") is acting hereunder as the governing body of the Enterprise; and

WHEREAS, the Enterprise is a government owned business authorized to issue its own revenue bonds and receiving under ten percent (10%) of annual revenue and grants from all Colorado state and local governments combined and it is hereby determined that the Enterprise is an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution; and

WHEREAS, the Town, acting by and through the Enterprise, has heretofore determined to acquire and develop certain properties and facilities for the collection, treatment, transmission, and disposition of water (the "Project"), said Project to be operated and maintained as part of the water system of the Town and the Enterprise (the "System"); and

WHEREAS, the Town is authorized by Title 37, Article 45.1, C.R.S., and Article X, Section 20 of the Colorado Constitution to issue revenues bonds authorized by action of the Board without the approval of the electors of the Town, such bonds to be issued in the manner provided in Part 4 of Article 35 of Title 31, C.R.S.; and

WHEREAS, the Board, acting by and through the Enterprise, has determined and hereby determines that it is in the best interests of the Town, and the residents thereof, to enter into a loan agreement (the "Loan Agreement") with the Colorado Water Resource and Power

Development Authority (the "CWRPDA") pursuant to which the CWRPDA will loan to the Town, acting by and through its Enterprise, an amount not to exceed $90,000; and

WHEREAS, the Board has approved a Loan Agreement with the CWRPDA, pursuant to which the CWRPDA will loan to the Town, acting by and through the Board, the amount of $90,000 for the Project; and

WHEREAS, none of the members of the Board have any potential conflicting interest in connection with the authorization, issuance, or sale of the bond, or the use of the proceeds thereof; and

WHEREAS, the Board desires to authorize the issuance and sale of the bond and the execution of the foregoing documents.

BE IT RESOLVED BY THE GOVERNING BODY OF THE TOWN OF STRATTON WATER ENTERPRISE:

Section 1. **Approval of Loan Agreement**. That Loan Agreement between the Colorado Water Resources and Power Development Authority and the Town of Stratton, Colorado acting by and through its Town of Stratton Water Enterprise and evidencing a loan from the Colorado Water Resources and Power Development Authority to the Town of Stratton, Colorado, acting by and through its Town of Stratton Water Enterprise is hereby approved.

Section 2. **Authorization of Bond**. In accordance with the Constitution, Title 31, Article 35, Part 4, C.R.S.; Title 11, Article 57, Part 2, C.R.S.; Title 37, Article 45.1, C.R.S.; and all other laws of the State of Colorado and pursuant to the Loan Agreement, there shall be issued the Town's "Governmental Agency Bond", in the aggregate principal amount of $90,000.00, for the purpose of paying the costs of the Project (the "Project Costs"). The accomplishment of the project is hereby authorized, approved, and ordered.

Section 3. **Election to Apply Supplemental Act**. Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S. (the "Supplemental Act") provides that a public entity may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Board hereby elects to apply some of the provisions of the Supplemental Act to the Loan Agreement and the Bond.

Section 4. **Special Obligations**. The Bond, together with the interest thereon, shall be payable only out of the Pledged Property as defined in the Loan Agreement. The owner of the bond (the "Owner") may not look to any general or other fund of the Town for payment of the principal and/or interest on the Bond, except the funds in accounts pledged thereto by this Resolution and the Loan Agreement, and the Bond shall not constitute a debt or an indebtedness of the Town within the meaning of Article XI, Section 6 of the Colorado Constitution or any statutory provision or limitation; nor shall it be considered or held to be a general obligation of the Town. Pursuant to Section 11-57-208 of the Supplemental Act, the revenue pledged to the payment of the Bond and Loan Agreement (the "Pledged Property" as defined in the Loan

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Agreement) shall immediately be subject to the lien of the pledge without any physical delivery thereof, filing or further act. The lien of such pledge shall have the priority described in the Loan Agreement and shall be binding and enforceable against all persons having claims of any kind in tort, contract, or otherwise, irrespective of whether such persons have notice of such lien.

Section 5. **Bond Details**. The Bond shall be in the principal amount of $90,000.00, shall bear interest at the maximum net effective rate of 1.75% per annum, calculated as provided in the Loan Agreement, shall mature as provided in the Loan Agreement, and shall be payable in the time and manner, and shall be subject to optional prepayment, as set forth in the Loan Agreement. The maximum net effective interest rate authorized for the Bond is 1.75% per annum and the actual net effective rate of the Bond does not exceed such maximum rate. The Town shall execute and deliver to the Authority the Bond pursuant to the Loan Agreement as evidence of the Loan Repayments, as defined in the Loan Agreement. The Bond shall be substantially in the form set forth in the Loan Agreement.

Section 6. **Conclusive Recital**. Pursuant to Section 11-57-210 of the Supplemental Act, the Bond shall contain a recital that it is issued pursuant to the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bond after its delivery for value.

Section 7. **No Recourse Against Officers and Agents.** Pursuant to §11-57-209 of the Supplemental Act, if a member of the Board, or any officer or agent of the Town or Enterprise acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the Bond. Such recourse shall not be available either directly or indirectly through the Board, the Town or the Enterprise, or otherwise whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Bond and as part of the consideration of its sale or purchase, any person purchasing or selling such Bond specifically waives any such recourse.

Section 8. **Form and Execution of the Bond**. The Bond shall be executed with a facsimile or manual signature of the Mayor of the Town, sealed with a facsimile or manual impression of the seal of the Town, and attested by the facsimile or manual signature of the Town Clerk. Should any officer whose facsimile or manual signature appear on the Bond cease to be such officer before delivery of the Bond to a purchase, such facsimile or manual signature shall nevertheless be valid and sufficient for all purposes.

Section 9. **Disposition and Investment of Proceeds**. The Bond shall be issued and sold for the purpose of paying the Project Costs. The Owner shall not be responsible for the application or disposal by the Town or any of its officers of the funds derived from the sale thereof.

All or any portion of the Bond Proceeds may be temporarily invested or reinvested, pending such use, in securities or obligations which are lawful investments.

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Section 10. **Authorization to Execute Documents**. The Mayor and Town Clerk shall and they are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Resolution, including, but not limited to, the execution of such certificates and affidavits as may be reasonably required. The execution by the Mayor of the Town of any document authorized herein shall be conclusive proof of the approval by the Town of the terms thereof.

Section 11. **Authorized Officer**. Dana Siekman, Mayor of the Town of Stratton or his successor, Larry Shutte, Mayor Pro Tem or his successor, and Paula McConnell, Town Clerk, are hereby authorized to act as the "Authorized Officer" under the Loan Agreement (as such term is therein defined), and to furnish their names to the Authority in accordance with the Loan Agreement.

Section 12. **Costs and Expenses**. All costs and expenses incurred in connection with the issuance and payment of the Bond shall be paid either from the proceeds of the Bond or from legally available moneys of the Town, or from a combination thereof.

Section 13. **Ratification and Approval of Prior Actions**. All actions heretofore taken by the officers of the Town and the members of the Board, not inconsistent with the provisions of this Resolution, relating to the authorization, sale, issuance, and delivery of the Bond are hereby ratified, approved, and confirmed.

Section 14. **Resolution Irrepealable**. After the Bond has been issued, this Resolution shall constitute a contract between the Owner and the Enterprise, and shall be and remain irrepealable until the Bond and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

Section 15. **Repealer**. All orders, bylaws, resolutions of the Enterprise, or parts thereof inconsistent or in conflict with this Resolution are hereby repealed to the extent only of such inconsistency or conflict.

Section 16. **Severability**. If any section, paragraph, clause, or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Resolution, the intent being that the same are severable.

Section 17. **Recording and Authentication**. Upon adoption hereof, this Resolution shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the Mayor and the Town Clerk.

Section 18. **Effective Date**. This Resolution shall take effect immediately upon adoption.

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INTRODUCED, READ AND PASSED AS A RESOLUTION at a regular meeting of the Board of Trustees acting as the governing body of the Town of Stratton Water Enterprise on the 13th day of November, 2008.

(SEAL)

Mayor

ATTESTED:

Town Clerk